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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 192.

NOVAK N. MARKU,
Petitioner,

vs.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

NOVAK N. MARKU,
Commercial Bldg.,
Canton, Ohio,
Attorney for Petitioner.

JOHN R. VINTILLA,
Of Counsel.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States.

The petitioner, Novak N. Marku, respectfully petitions this Honorable Court for a writ of certiorari to review an order and judgment of the Supreme Court of Ohio, rendered in this cause on January 19, 1955.

OPINION BELOW.

The Supreme Court of Ohio denied the appeal of petitioner to review the judgment of the Court of Appeals for the Eighth Judicial District of Ohio for the reason that no debatable constitutional question was involved. 162 Ohio St. 536 (R. 3, 4). The opinion of the Court of Appeals in the instant case (R. 28-39) has been reported

at 121 N. E. 2d 449; and in the companion case below at 121 N. E. 2d 446 (R. 40-45).[1]

JURISDICTION.

The judgment of the Supreme Court of Ohio was entered on January 19, 1955 (R. 3, 4). The application for rehearing was denied February 9, 1955, by the Supreme Court of Ohio (R. 4). On April 22, 1955, by order of Mr. Justice Reed, petitioner's time to file a petition for a writ of certiorari was extended to and including July 1, 1955. The statutory provision believed to sustain the jurisdiction of this Court is Section 1257 of Title 28 of the United States Code.

QUESTIONS PRESENTED.

1. May a mutual benefit society of the character of a fraternal insurance group require its members to execute a loyalty affidavit which contains statements that are ambiguous, general and so vague as not to give adequate guidance and knowledge to the affiant as to the meaning of said statements upon penalty of suspension or forfeiture of membership rights?

2. May such an association cancel and destroy the insurance and other valuable rights of a member without charges, notice and hearing, when the rules of the association make no provision therefor?

3. Whether membership rights in a fraternal benefit society are entitled to the safeguards of due process and the equal protection of the laws as provided in Section 1 of the Fourteenth Amendment to the United States Con-

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[1] References to the proceedings and record in the Supreme Court of Ohio are designated as "R." References to the stenographic transcript of proceedings and evidence in the Court of Appeals on trial de novo are designated as "Tr."

stitution in absence of self-binding limitations by contract between the society and the member?

STATEMENT.

The petitioner instituted an action in the Court of Common Pleas of Cuyahoga County, Ohio, for relief in equity from the wrongful cancellation and illegal forfeiture of the accident and death benefit certificate (insurance policy) which he carried since 1940 with the respondent herein, The Union & League of Romanian Societies of America, Incorporated, a fraternal benefit society organized and existing under the laws of the State of Ohio, and operating as such in the various states of the United States and in Canada. The petition also contained a second cause of action whereby the petitioner sought further relief in the nature of a mandatory injunction to require the officers of the corporate respondent to permit him to inspect the books, records, and accounts of the respondent. After an adverse decision by the trial court, the action was appealed on law and fact to the Court of Appeals for the Eighth Judicial District of Ohio (Cuyahoga County) along with a companion case entitled *United Romanian Society Carpatina vs. The Union & League R. S. A., et al.*; and upon presentation by stipulation of a single record of the evidence below, the Court of Appeals heard said cases in a trial de novo in accordance with the provisions of Ohio law, and thereupon dismissed the petitions in both cases. A motion for a new trial in the Court of Appeals was overruled. An appeal in both cases was taken to the Supreme Court of Ohio on questions of law involving the constitutional rights of the appellants as guaranteed to them by the Fourteenth Amendment, Section 1, to the Constitution of the United States, and Article I, Section 16, of the Ohio

Constitution. The Supreme Court of Ohio dismissed the appeal in each of the respective cases on the basis that no debatable constitutional question was involved. Thereafter, an application for rehearing was filed in the Ohio Supreme Court, which was likewise denied. A review of the actions of the Supreme Court of Ohio is being sought herein only by the petitioner, Novak N. Marku.

The matter in question was heard de novo in the Court of Appeals which filed an opinion with its decision therein (R. 28-39). The decision was appealed to the Supreme Court of Ohio on the principal basis that the said decision strikes down the constitutional rights of the petitioner. On January 19, 1955, the Supreme Court dismissed that appeal as not involving a debatable constitutional question (R. 3, 4). Thereupon, petitioner filed an application for rehearing with the Supreme Court which was also denied on February 9, 1955 (R. 4, 5-16).

The petitioner became affiliated with the respondent fraternal association by means of an insurance policy which he procured from said association in the amount of $1000.00 through its member society in Canton, Ohio. The respondents herein are the national association and its officers. For purposes of clarity we shall refer to the respondent organization as the "Union & League." The petitioner continued as a member until the time in question herein, during which period he paid premiums on his insurance policy and other assessments to the Union & League.

To the extent that petitioner was a member of the Union & League, by virtue of the insurance policy which he carried with it, he was subject to its constitution and by-laws, as well as the decisions and regulations enacted by the national conventions of the Union & League which met every two years, the convention being the supreme

governing and legislative authority. At the time in dispute herein, the petitioner was the president of the Canton Society, having been elected as such for each of the preceding four years. The present leadership of the national association, the Union & League, dates from the September, 1948, biennial convention held at Youngstown, Ohio. At that national convention, a resolution was adopted providing that all officers of the national association and of its member societies should sign a certain loyalty affidavit. That resolution, adopted in the Romanian language, is in the record in translation (Tr. 135) and it provides as follows (R. 32, 33):

> "The officers of the Union and League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not communists; that they do not belong to any subversive organization which works against the Constitution and Laws of the United States of America."

The form of affidavit prepared by the national officers in 1948 pursuant to the aforesaid resolution and furnished to the member societies prior to 1951 was, as a matter of fact, copied from that in use by the National Labor Relations Board (R. 57).

The petitioner, of necessity, will refer to the companion case below, hereinafter referred to as the Carpatina case, inasmuch as the issues were identical in both cases, and the testimony and evidence received in said case has been adopted as a part of the evidence in this case, and, together with additional evidence and testimony, comprised the record before the Court of Appeals on trial de novo. The principal relief sought in the companion case below was in the nature of injunction and a declaratory judgment as to the validity of the revised loyalty

affidavit of 1951 (R. 40, 45). The basis for the controversy between the petitioner and the corporate respondent was identical to that of the Carpatina Society of Cleveland; namely the validity of the revised affidavit of 1951. The petitioner and his society believed as did the Carpatina Society that the officers of the corporate respondent were without authority to require the petitioner and others to execute the revised affidavit of 1951 prior to clarifying and/or interpreting the ambiguous and vague statements contained therein.

In December, 1948, and December, 1949, the officers of Carpatina Society and this petitioner as president of the Canton Society received from the national office and executed the non-communist form of affidavit referred to (R. 57). The September, 1950, convention at Windsor, Canada, took no additional action with reference to the non-communist affidavit and in December of 1950, the same form of affidavit previously submitted was sent by the national officers to the Carpatina Society and to this petitioner as an officer of the Canton Society and executed by them and him. In December of 1951, however, upon receipt of the non-communist affidavit, the officers of the Carpatina and Canton societies noted that the previous terms had been supplemented by certain additional provisions, obviously a result of some change on the part of the national officers. The affidavit executed by the officers of the Carpatina and Canton societies, as well as all other societies of the Union & League, in 1948, 1949, and 1950 had three provisions (R. 57). The affidavit received in 1951 (R. 46, 51) contained these same provisions, so far as Items 1 and 3 were concerned, and changed with respect to Item 2, providing not only that the affiant was not *but never had been affiliated with an organization referred to as the I. W. O. (International Workers Order), and had*

never been an active supporter of the latter (R. 46, 51). Completely new additions to the affidavit for the first time appearing in December of 1951 are three paragraphs numbered 4, 5, and 6. They have nothing to do with anti-communism or the requirements of the resolution of 1948. We quote the new provisions 4, 5, and 6 in their entirety.

> "4. I have not been sentenced to prison for a crime nor have I been found guilty of moral turpitude nor have I caused the member societies or the central organization any moral and material loss.
>
> 5. I have not been guilty of mishandling or misappropriating public funds of any social, fraternal or religious organization.
>
> 6. I am not now a suspended or passive (inactive) member of the Union and League of Romanian Societies of America." (R. 46, 51.)

The record reveals that upon receipt of the new version of the affidavit from the national headquarters in December of 1951, the members of Carpatina immediately noted the new provisions and, by formal resolution in meeting assembled, sought clarification from the national organization as authorized by the national constitution and by-laws (Tr. 943). While awaiting such clarification, the officers of Carpatina, in order meanwhile to be on record against communism, and to conform with the resolution of 1948, signed and forwarded to the national organization the same loyalty affidavit (Tr. 229, 277, R. 56), which they had previously executed in the years 1948, 1949, and 1950. They thus again averred their non-acceptance of communism in any form (Tr. 208, 571).

Upon receipt of the affidavit executed by the newly elected officers of the Carpatina Society for the year 1952, the National President wrote a letter (Tr. 956) stating that the national officers could not approve the local

officers and asked the society to send one or two representatives to a meeting of the Executive Committee of the national body on March 8, 1952, to explain the position of the society (Tr. 222). At that meeting, the president of the national society stated to the executive committee that the officers of the Carpatina Society were afraid to sign the new form of affidavit (Tr. 233). Thereupon, at his request, and based upon his representations that Carpatina officers had signed false affidavits and were fearful to declare themselves against communism, the Executive Committee sustained the national president and suspended the entire Carpatina Society until the national convention to be held at Lorain, Ohio, in September, 1952 (Tr. 959).

When the national convention assembled at Lorain, Carpatina Society was denied representation, and was permitted no voice in the organization or conduct of the convention. It was refused permission to vote for the national officers to be elected for the ensuing two years, officers who would have general charge and control of the property, including the beneficial rights of members under the insurance policies on which monthly premiums were payable to the national society by the members of Carpatina, as well as by all other constituent members (Tr. 301, 302, 334, 578). Furthermore, without advance notice to the officers of Carpatina, the national president, at the national convention, referred to a grievance committee, set up by the national convention, certain charges he had drawn up against the twenty-five officers and committee members of Carpatina Society elected by that society in December, 1951 (Tr. 335 and ff.). *None of the aforesaid officers was advised in advance of these charges and they were given no opportunity to defend themselves or even to know that they were being charged with violation of*

any laws of the national association (Tr. 336, 537, 579). As a matter of fact, there was no provision in the national constitution or in its rules and by-laws for delegating authority to a grievance committee to hear charges or punish members (Tr. 338, 339). Nonetheless, this aforesaid grievance committee, chosen by the national convention, heard these unsubstantiated charges presented to them by the national president relating to the officers of Carpatina Society (Tr. 331, 332, 348). In the absence of these officers and with no other evidence than the accusations of the national president, the grievance committee forthwith made a finding that these twenty-five officers had signed false affidavits and recommended suspension of twenty-four and expulsion of one. This finding or report of the grievance committee was thereupon immediately laid before the national convention. With the entire memmership of the society suspended and unable to vote or to defend themselves, and without presentation or hearing of any charges, the national convention approved the findings and recommendations of the grievance committee (Tr. 342, 496, 497). The national convention thus placed "in passivity" twenty-four members and expelled one. This action meant that the twenty-four were denied the right to speak, to vote or to hold office in the local society and in the national body for periods ranging from one to five years, and one member, the attorney for the society and of counsel, on the petition and brief herein, was permanently expelled, and his insurance policy cancelled.

In view of the single record below of the evidence in the Carpatina case and that of this petitioner, and the fact that the actions and the consequences therefor of the Canton Society (of which this petitioner was its president at the times mentioned herein) were the same as the Carpatina Society relative to the revised affidavit of

1951, we deem it advisable to set forth the aforementioned events surrounding the Carpatina case as explanatory background for a proper understanding of the instant cause.

On January 20, 1952, the petitioner was re-elected president of the Canton Society for 1952. Inasmuch as the Canton Society had taken the same position as the Carpatina Society regarding the revised affidavit of 1951, the petitioner executed and submitted the same loyalty affidavit for 1952 which he executed for the three previous years of 1949, 1950 and 1951, and the same as the Carpatina officers (R. 56, 57), while awaiting clarification of the one sent to the societies in December of 1951 to be used for 1952.

Thereafter the Canton Society was notified by the national body that its officers were not approved and to send one or two delegates who would represent the Society at a meeting of the Executive Committee to be held March 8, 1952 (Tr. 993), the same as in the Carpatina case.

Pursuant to said notice the appellant as president presented himself as a delegate and representative of the Canton Society at the meeting, but was not permitted to speak or be heard in behalf of said society and/or for himself (Tr. 822).

Without affording the petitioner an opportunity to be heard as a representative in behalf of said society, the Executive Committee decided that the member society be suspended until the forthcoming convention to be held at Lorain, Ohio, in September, 1952 (Tr. 823). This decision was predicated upon the misrepresentation of the national president to the Executive Committee that the petitioner and other officers of the Canton Society had signed false affidavits and were fearful of declaring themselves against

Communism—the same as had been done in the companion Carpatina case.

As a result thereof, the petitioner was automatically suspended as were all other members of said society and placed under accusation until the forthcoming convention of the corporate appellee to be held at Lorain, Ohio, in September, 1952.

On July 15, 1952, the petitioner had written a letter (R. 55) to the officers of the corporate respondent requesting that he be permitted to examine and inspect the books, records, and accounts of the corporate respondent. In response thereto petitioner received a letter dated July 21, 1952, wherein he was refused the right to examine and inspect but was informed that he would be given an opportunity to make inquiry regarding said records, books, and accounts at the convention of the corporate respondent to be held at Lorain, Ohio, on September 5, 1952 (Tr. 998).

The petitioner was duly elected as a delegate to represent the Canton Society at the Lorain covention of 1952. On August 7, 1952, the Society was notified by the national officers that petitioner was not acceptable as a delegate stating that he was not eligible to be elected a delegate on the basis of Art. IV, Sect. 6, Paragraphs b and c (Tr. 834), which read as follows:

> "Section 6. The active members of the member societies who fulfill all the requirements of the constitution and by-laws, shall have the right to be elected to any office of the member society or to the central organization, excepting when the constitution and by-laws otherwise provide.
>
> The following are not eligible to be elected to office:
>
> (b) Those who are found guilty of moral turpitude, and who have caused the member societies of

the central organization any moral and material losses.

(c) Those under indictment or accusation by any forum of the Member Societies or of the Central Organization." (Tr. 987.)

On cross-examination of the secretary of the corporate respondent, in connection with the serious unsubstantiated charges of said letter, the wanton and malicious conduct of the national officers was clearly established, when the secretary responded, "I don't remember, I don't know," to the query, "When was Mr. Marku found guilty of moral turpitude and by whom and why?" and when he testified that he did not know or remember when a hearing was held on any evidence warranting such a charge (Tr. 835, 836, 837).

The contents of this letter were communicated to the members of the Canton Society at a meeting held at the society's hall. The letter published and implied to the members of said society among other things, that the petitioner had been found guilty of moral turpitude. The petitioner took vehement exception to this publication and implication, and called upon the national officers to prove that he had ever been found guilty of moral turpitude and reminded said national officers that such publication necessarily had the result of injuring the petitioner in his practice as an attorney at law and that if he were ever found guilty of moral turpitude as alleged he could be subjected to disbarment (R. 47-49).

The petitioner presented himself with the proper credentials from the Canton Society as a delegate to the convention of the corporate respondent held at Lorain, Ohio, in September, 1952. At that time, he was denied the right to be seated and to participate as a delegate by the president and secretary of the corporate respondent. The

petitioner was not permitted to participate in said convention. More seriously, he was never notified that the convention or any other body was going to proceed against him as an individual member nor was he given any opportunity to appear or defend against any charges that may have been placed against him.

During the convention, a grievance committee, acting upon the charges placed before it by the national president to the effect that the petitioner and other officers of the Canton Society had executed a "false affidavit," rendered a finding of guilt on said charge and recommended to the convention at large that the petitioner be punished, along with another member, by expulsion from the society and the national organization, and that the other officers of the society be punished by varying degrees of suspension ranging from periods of six months to five years. As a result thereof, the officers were denied and deprived of the right to speak, vote, or hold office in the society or the national organization (Tr. 851, 852).

Immediately upon the recommendation of the grievance committee to the convention at large that the petitioner be expelled from the organization, and before the convention had acted upon said recommendation, the petitioner requested that he be accorded the right to be heard and to defend against said finding and recommendation (Tr. 860, 861). The national officers' response to this plea was to have petitioner escorted and evicted from the convention meeting hall (Tr. 853).

Following petitioner's eviction from said convention hall, the convention at large did act upon the grievance committee's recommendation and expelled petitioner from membership in the Canton Society and the corporate respondent, and ordered the cancellation of petitioner's

property right in and to his insurance policy issued by the corporate respondent (Tr. 860, 906, 908).

As a result thereof, the petitioner was also deprived of the right and opportunity to make inquiries about and to inspect the books, records, and accounts of the corporate respondent (Tr. 861), despite the assurance that he would be given the opportunity to make inquiries concerning and to inspect the corporate respondent's books, records, and accounts at the convention of Lorain, Ohio, in September, 1952 (Tr. 998).

SPECIFICATION OF ERRORS TO BE URGED.

1. The Court of Appeals erred in holding that the respondents had authority and the right to require the petitioner to execute the revised loyalty affidavit of 1951.

2. The Court of Appeals erred in holding that the respondents had the power and the right to expel petitioner and to cancel his insurance policy for failure to execute the loyalty affidavit of 1951.

3. The Court of Appeals erred in holding that the petitioner was lawfully expelled, and his insurance policy properly cancelled without charges, notice and hearing.

4. The Supreme Court of Ohio erred in dismissing the appeal of petitioner on the basis that no debatable constitutional question was involved.

REASONS FOR GRANTING THE WRIT.

1. The decision of the State Court of Appeals sanctions the deprivation and destruction of petitioner's property rights in his insurance policy in violation of due process of law.

The instant controversy arose as a result of the revised loyalty affidavit of 1951 and became the source of the difficulties which beset this petitioner. The problem which confronted this petitioner and other officers of the Canton Society was identical to that of the Carpatina Society in the companion case below. The petitioner and his society believed as did the Carpatina Society that the officers of the Union & League were without authority to revise and reconstruct the loyalty affidavit in 1951 and require the petitioner and other officers to execute it prior to clarifying and/or interpreting the ambiguous and vague statements therein. The record shows that the petitioner and Carpatina Society did not refuse to sign the revised affidavit, *but that they sought an interpretation or clarification as to the meaning which the national officers attribute to the new statements which they inserted and which first appeared in the affidavit in December of 1951.* The serious objection to the affidavit in question is that it contains statements to be sworn to under oath which are ambiguous, general, and so vague as not to give adequate guidance and knowledge to the affiant as to the exact meaning of the statements which he is called upon to swear to under oath. The inability of a member to fully understand its terms prevents him from executing the affidavit and automatically leads to the denial of his fundamental rights. A member is deprived of his rights and privileges without having committed any proscribed act or without having violated any law. Such is the case of this

petitioner and others as shown by the record. The affidavit in question places the burden upon the affiant-member to resolve the ambiguities and interpret the statements in the affidavit at his peril. He must first define and interpret the statement, for example, "nor have I been found guilty of moral turpitude," and then speculate that his definition and interpretation of this ambiguous term is identical to that of the national officers in order to qualify for office or as a convention delegate, and more important, so as not to involve him in perjury. *By what authority can the members be forced into this position of jeopardy?* How can an ordinary layman be expected to define and interpret "moral turpitude" when even our judicial tribunals cannot agree upon its meaning? In his lecture under the Ernst Freund Lectureship at the University of Chicago Law School on February 11, 1953, entitled "Some Observations on Supreme Court Litigation and Legal Education," Mr. Justice Frankfurter of this Honorable Court stated as follows:

> "There are kindred issues of ambiguous legal standards. For example, statutes dealing with 'moral turpitude,' dealing with or condemning people or excluding people or deporting people or denying citizenship for not satisfying the law because they are guilty of 'moral turpitude.' *What does that mean?* Well, an enterprising judge, a judge of stimulating and fermenting suggestiveness, says quite seriously that we ought to take a Gallup poll. Another judge of great eminence says you must get the feeling of the community, discover what is the sense of the community. *You can see how easy that is to determine.* A third jurist—a jurist being a person who hasn't the responsibility for decision—thinks the judge should look inside of himself and should act on his own moral standard." (Italics ours.)

In this same regard, we further invite this Court's attention to a recent Ohio case entitled *In Re Dombey*, 68 Abs. 36 (21 Ohio Bar 31), decided July 3, 1954, by a special three judge court. This action involved a proceeding against an attorney at law charged with conduct involving moral turpitude. In its opinion, the court stated with reference to the term "moral turpitude" as follows:

> "* * * The statute does not define 'moral turpitude,' and the term is almost impossible of exact definition. The phrase 'moral turpitude' has been defined many times by courts, and often the definitions have been more confusing than enlightening. * * * The phrase 'moral turpitude' is found in many Federal and State Statutes. As used in the Federal Deportation Statute that phrase has been given one meaning; as used in connection with criminal acts another meaning; and as used in disbarment proceedings a third meaning. * * *."

In accord with the foregoing reasoning, the officers of petitioner's Society requested the national officers to inform them as to the meaning which they place on said term, since they inserted it in the affidavit, and they would ultimately interpret its meaning for the purpose of the affidavit. And what is the meaning of "causing moral and material loss" for purpose of the affidavit? If a member had inserted a paid advertisement in the annual calendar or almanac of the International Workers Order, as was done by the national president, Craciun, respondent herein, and vice-president, Pulca (Tr. 433, 434, 435, also Carpatina Ex. 31), can that be interpreted as having "actively supported the I. W. O." as required to be foresworn in the affidavit? Yet, in absence of an official interpretation by the national officers, as requested, some members may conceivably reach such an interpretation and thus feel unable to execute the affidavit, and thereby for-

feit fundamental rights. If so, how did respondent Craciun qualify for office in view of his support of the I. W. O.? With reference to the I. W. O. (it has been dissolved and no longer exists), many members have belonged, at one time or another, to the Romanian branch of said fraternal association for insurance purposes only. Such was the complaint of the member society of Salem, Ohio, before the March 8, 1952, meeting of the executive committee (Tr. 763, 764). Under the affidavit in question, the fact of membership alone disqualifies, although membership may have been innocent, and regardless of knowledge of the organization to which they belonged. The affidavit clearly violates fundamental rights guaranteed under the due process clause of the federal constitution. To sustain the affidavit in its present form, as was done by the Court of Appeals, results in granting powers to the corporate respondent and its officers that are unlimited and in excess of the constitutional limitations of the federal constitution. Such associations as this corporate respondent are not above the law of the land, nor altogether a law unto themselves.

The petitioner had an absolute right under the provisions of the association's laws to seek an interpretation and clarification of the new additions to the affidavit before executing it. Instead of receiving the clarification requested, petitioner was falsely accused by the national president of having signed a "false affidavit" (R. 56), although the affidavit, which he executed for 1952 (R. 56) (while awaiting clarification of the revised one) was identical in every respect to that which he executed for the three prior years (R. 57).

Under paragraph 2 of the affidavit as revised in 1951, the national officers provided that active support of or membership in the International Workers Order or past

affiliation "with any organization which has been or is subversive or identified as communist, Nazist or Fascist, or in any way un-American or contrary to the American principles and ideals of free government" should be a disqualification for office in the local society and national association. It was the request for clarification of such patently vague statements which appeared for the first time in the affidavit in 1951, *and* the refusal to forswear to same prior to clarification thereof, that led first to the suspension and then subsequent forfeiture of all rights of this petitioner and others, including cancellation of petitioner's insurance policy with the corporate respondent. Does this assertion of arbitrary power by a voluntary association leading to the complete destruction of a member's property rights come within the prohibition of Section 1 of the Fourteenth Amendment to the Constitution of the United States? Petitioner submits that the decision and holding of this Court in the recent case of *Wieman v. Updegraff*, 344 U. S. 183 (1952), commends itself to the problem of the loyalty oath in the instant case.

The fact that the property rights which are destroyed by the arbitrary use of a loyalty oath arise from membership in a fraternal insurance society does not, we believe, remove such action from constitutional restraint. But here, with the decision of this Court in the Oklahoma case before them, the Ohio Appeals Court and Supreme Court, refused to extend the protection of due process to the insurance rights of this petitioner. The proposition affirmed by this Court in *Shelley v. Kraemer*, 334 U. S. 1 (1948), "that the action of state courts and judicial officers in official capacities is to be regarded as action of a state within the meaning of the Fourteenth Amendment, * * *" is applicable, we submit, to the actions of the state courts herein whereby they sanctioned the destruc-

tion and deprivation of petitioner's property rights in violation of the safeguards of the Fourteenth Amendment. Does the arbitrary use of a test oath combined with attainder become less dangerous and offensive when required by a fraternal benefit society which like the within oath becomes the basis of forfeiture of property rights due to the inability of a member to execute it? We think not. The opinion of the Court of Appeals concluded that the corporate respondent had authority to require petitioner and others to take the oath in question containing the vague and ambiguous statements, and that in view of the failure of petitioner to execute such affidavit, he was lawfully expelled, and his insurance policy properly cancelled. The record clearly shows that petitioner's insurance policy and rights therein have been forfeited not because he committed any offense under the laws of the organization or otherwise, not because he refused to execute a loyalty oath, but because he sought clarification of the new additions which were inserted in the loyalty oath for the first time in 1951.

2. The decision of the Court of Appeals, and the refusal of the Supreme Court of Ohio to review said decision, constitutes a denial of the equal protection of the laws to this petitioner as established by the well settled decisional law of Ohio and as guaranteed to him by the laws of State and Nation.

The instant controversy presents the serious question as to whether membership rights in a voluntary association in the nature of a fraternal insurance society are entitled to federal constitutional protection? Stated otherwise, do such members waive or relinquish their fundamental constitutional rights upon joining such associations in absence of any voluntary limitation by contract?

The Ohio courts have denied the petitioner his constitutional rights in at least one, and possibly two, respects. First, the Ohio courts permitted the deprivation of petitioner's rights in his insurance policy without any probative evidence of wrongdoing by the petitioner. Second, they sanctioned the forfeiture of petitioner's property rights in a manner completely devoid of the fundamental safeguards of our law requiring charges, notice and a hearing with an opportunity to make a defense before being condemned or prejudiced in one's rights.

The basis for visiting such serious punishment upon petitioner is readily apparent. Prior to the Lorain convention of 1952, he questioned certain financial and audit reports of the officers of the corporate respondent. On July 15, 1952, he requested the right to inspect the original records, books and accounts of the association (R. 55). His request was denied at that time, but he was assured of the opportunity to do so at the Lorain convention. It is significant that when he presented himself at the convention, he was not only denied the exercise of this valuable right, but he was also not permitted to participate in said convention and was expelled from the association.

The Court of Appeals sanctioned and condoned the actions and procedure pursued and gave no consideration whatsoever to the uncontroverted facts in the record that this petitioner was expelled "without having committed any offense," that he was punished without "a regularly conducted trial," on due notice "by properly constituted corporate authorities," and a "judgment arrived at in good faith." It was of no legal consequence to the State courts that the punishment meted out to the petitioner was unduly oppressive and without warrant and justification in law. More seriously, the Appeals Court was not moved by the fact that petitioner's property rights in his

insurance policy have been forfeited contrary to the plainest principles of justice.

There is no support in law for the actions of the respondents in finding petitioner guilty without presenting him with any charges, without notice, and without giving him an opportunity to appear, to be heard, and to defend. Such actions are repugnant to the concepts of natural justice and violative of the due process clause of the Federal Constitution. Not only are such actions an abridgment of the fundamental constitutional rights guaranteed to petitioner, but the procedure pursued by the respondents has been frowned upon by the courts throughout the land. The proposition of law which has been enunciated over and over again by the courts throughout the land in questions relating to membership rights in mutual benefit societies is best summarized in the case of *Taboada v. Sociedad Espanola De Beneficencia Mutua*, 27 *A. L. R.* 1509, 215 Pac. 673. The plaintiffs in this case sought a writ of mandamus to compel defendants to restore them to membership in, and to allow them free access to, the meetings of the defendant society. The Supreme Court of California affirmed the trial court in granting the writ, and during the course of its opinion stated as follows:

> "* * * It is a fundamental principle of justice that no man may be condemned or prejudiced in his rights without an opportunity to make his defense. This rule is not confined alone to courts of justice and strictly legal tribunals, but is applicable to every tribunal which has the power and authority to adjudicate questions involving legal consequences. And a society acting upon the expulsion of a member is a quasi-judicial body, and its hearing is a quasi-judicial hearing * * *. The proceedings of the society, in order to be regular and legal, in effect, must there-

fore provide for notice to the accused and afford him an opportunity to be heard * * *." (Citations omitted.)

The opinion of the Court of Appeals reveals that it either ignored or rejected the rules under which the issues should have been determined. The court concerned itself simply with the question as to whether this association had the right and power to punish its members and whether it could do so to the extent involved in the within cause. Having found that the national body did have power to discipline, it thereby concluded that the penalty imposed against the petitioner was proper and valid. This question as to the power of the corporate respondent to discipline its members was not in issue. It was, and it is here conceded, that such organizations have an inherent right to punish their members even in the absence of an express provision therefor. However, one of the principal questions presented to the Court of Appeals was whether the corporate respondent could deal with the rights of its members, under the guise of family chastisement, in a manner which is repugnant to our democratic ways and contrary to the demands of fair play, which, in the last analysis, is the spirit of the law of our land.

The grave error of the Court of Appeals was its assumption that the corporate respondent had the power to require the petitioner to execute the affidavit in question, and that refusal to take the oath as prescribed by the changes to the affidavit in 1951, operated as an admission of wrongdoing, automatically authorizing the Union & League to impose the penalty which was meted out to this petitioner. Under the theory that such organizations have the power to punish their members free of outside interference, the Court of Appeals decided that the actions taken against the petitioner and others by the Union &

League were conclusive upon the court. This general proposition of law was distorted by the court into a complete disregard of its judicial function in the protection of the rights of the petitioner as guaranteed to him by the Constitution and laws of this nation. It is one thing thus to recognize the freedom which the law wisely leaves to these associations in regulating themselves. It is quite another thing, however, to sanction the deprivation or complete destruction of a member's rights by these associations in a manner which is repugnant to our concepts of justice and fair play. If a voluntary association acts arbitrarily in relation to the rights of its members, that is precisely the kind of action, as we understand, which the due process clause forbids.

The deference paid to voluntary associations by the courts is closely analogous to that which is accorded to regulatory bodies. The legal principle applicable to regulatory commissions, we believe, is equally controlling with regard to voluntary associations. This principle has been clearly enunciated by Mr. Justice Cardozo in delivering the opinion of this Court in the case of *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio,* 301 U. S. 292, at page 304:

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. Indeed much that they do within the realm of administrative discretion is exempt from supervision if these restraints have been obeyed. *All the more insistent is the need, when the power had been bestowed so freely, that the 'inexorable safeguard' of a fair and open hearing be maintained in its integrity.*

The right to such a hearing is one of 'the rudiments of fair play' assured to every litigant by the Fourteenth Amendment as a minimal requirement. There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored." (Citations omitted.) (Emphasis ours.)

While we recognize the principle as being firmly and correctly established that civil courts ought not to rejudge the decisions of voluntary associations as to matters within their jurisdiction, we cannot accept as correct the conclusion of the Court of Appeals that the actions of such bodies are immune from judicial scrutiny and outside of the protective provisions of our constitution. If this were true then any such governing body could make a far-reaching decision (such as was done by the respondents relative to the reconstructed loyalty affidavit), obviously in conflict with the rules of the association and contrary to the laws of the land, and yet a party affected thereby would be unable to appeal to the authority of our civil courts for redress. Voluntary associations and their tribunals could be turned into offices of tyranny or fraud, and yet under the conclusions of the Court of Appeals there would be no civil redress. Clearly, it is not the intention of our law to recognize as legitimate the revolutionary action of a majority of an organization in fraud of the rights of a minority seeking to maintain the integrity of the laws and original compact.

Examination of the record in this case clearly discloses that due process was violated because there was no observance by the national officers, nor by the executive committee, nor by the national convention, of the right to notice, the right to be heard, the right to know of what one was accused. The charges of the national president,

respondent herein, were themselves false. The record reveals that the petitioner as an officer never signed a false affidavit. He signed a non-communist affidavit, in entire compliance with the ruling of the national convention of 1948 (R. 33, 56, 57). Yet the grievance committee, without any hearing on the president's charges, and without notice to the petitioner as the alleged offender, found him guilty, and decreed his expulsion and the cancellation of his insurance rights. The national convention, likewise misled as to the facts by the national president, in turn made a like mistake. The instant case shows the reason for insistence by the courts that no one under democratic process should be tried in absentia and without notice.

As stated by Mr. Justice Douglas in his concurring opinion in the case of *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U. S. 123:

> "Notice and opportunity to be heard are fundamental to due process. * * * The rudiments of justice, as we know it, call for notice and hearing—an opportunity to appear and to rebut the charge * * *."

While recognizing that rights of individuals in mutual benefit associations cannot be expected to be observed with all the technical niceties conducted by a court of law, petitioner believes that the record in this case shows such shocking and flagrant disregard of his rights, and such invasion of valuable property rights, involving forfeiture of his financial security in his beneficial insurance policy, that a judicial tribunal alone can protect and restore him to these rights. From the undisputed facts, petitioner believes it apparent that no improper acts were committed by him and that he was falsely charged and illegally punished. It is significant that Novak N. Marku, petitioner herein, was the legal advisor and attorney of record for the Canton Society and he has been made to suffer dis-

proportionately because of his courage and advice and his resistance to what appeared to him to be oppressive, tyrannical and illegal conduct. The expulsion of Marku was exhibition of the kind of conduct by the national officers displayed by one-time European dictators who believed their despotic ends could best be accomplished by the exile of attorneys bred in traditions of freedom. This expulsion, if carried out, would deprive the Canton Society of its one active legal member, and for him, it would mean the entire loss of association with friends and the cancellation of his beneficial interest in the insurance policy, for the future enjoyment of which he had been making payments for many years.

CONCLUSION.

The issue herein is of vital concern to the entire membership of the corporate respondent. Ever since the individual respondents and their clique came to power in 1948, the organization has been conducted by a virtual dictatorship. The Carpatina and Canton Societies have been without representation in the conventions of the Union & League since 1948. The Carpatina Society is the oldest, and until the recent difficulties, had been the largest member society of the Union & League. The enlightened and courageous memberships of these societies were quick to contest the arbitrary conduct upon which the respondents embarked immediately after coming to power. The record shows that other societies and members disputed the actions of the national officers. Unfortunately, other than the petitioner and the Carpatina Society in the companion case, they did not have the courage of their convictions and were fearful to stand up for their rights in view of the seeming futility thereof. A dark shadow of fear has been cast over the membership of the Union & League. The

decision of the Court of Appeals has served only to strengthen the dictatorial hand of the respondents, and has removed any semblance of effective opposition to those in power. The State Courts permitted the forfeiture of valuable rights and denied judicial protection to the property rights of this petitioner. The Court of Appeals evaded the substantial questions which were presented for determination. For the State Courts to sustain the forfeiture of the beneficial rights herein has been, in effect, an aiding and abetting of the unlawful actions of the controlling officers, and a sanction of the vicious underlying purpose of the revised affidavit in dispute. The case involves a serious disregard of our basic principles of law.

We respectfully urge that this petition for a writ of certiorari be granted so that this Honorable Court may take a full look at the controversy in the interest of protecting fundamental rights granted to this petitioner by the Constitution of this nation.

Respectfully submitted,

NOVAK N. MARKU,

Attorney for Petitioner.

JOHN R. VINTILLA,

Of Counsel.

APPENDIX A.

Opinion of the Court of Appeals.

No. 23,212.

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT,

STATE OF OHIO, CUYAHOGA COUNTY, SS.

NOVAK N. MARKU,
Appellant,

v.

UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,
Appellees.

OPINION.

Argued July 8, 1954.
Decided Aug. 16, 1954.

HUNSICKER, *J.*

This is an appeal on questions of law and fact from the Court of Common Pleas of Cuyahoga County, Ohio.

Novak N. Marku filed an amended petition in the trial court against the Union & League of Romanian Societies of America, Inc., and its president, its secretary, and its attorney, in which amended petition he alleged in substance that: he is the president of one of the constituent member societies of the corporate defendant herein; he is the holder of a death, sick and accident benefit certificate in such corporate defendant; he is president of a branch society of the corporate defendant; he signed for the year 1952 a loyalty affidavit and sent it to the corporate defendant, as required by the bylaws of the Union

& League of Romanian Societies of America, Inc.; he, at the request of the corporate defendant, attended an executive committee meeting on March 8, 1952, as a delegate and representative of the branch member society Traian & Iuliu Maniu Society of Canton, Ohio, to answer certain charges made against his branch society by the officers of the corporate defendant; he was not allowed to be heard or defend as a delegate of his society; the executive committee suspended until the next convention his society and placed him (Novak N. Marku) under "accusation" until the forthcoming convention of the corporate defendant, to be held at Lorain, Ohio, in September 1952; he was duly elected a delegate to this convention by his branch society, but that "the individual defendants Joseph J. Cracium and George Dobrea, as president and secretary, respectively, of the corporate defendant, refused to approve the plaintiff, Novak N. Marku," as a delegate; he was denied a seat as a delegate, was tried by a grievance committee without having been notified personally or in writing of any charges, and "without being given notice and an opportunity to appear, be heard and defend against any charges before the committee of the convention body"; the convention body, upon recommendation of the grievance committee, expelled him from the branch society and the corporate defendant organization; the actions of the officers of the corporate defendant in denying the member society "Traian & Iuliu Maniu" of its rightful representation in the convention and the refusal to seat the plaintiff (Marku) as the representative of the member society "were in wreckless (sic) disregard of the material and fundamental rights of 192 members of said society * * *"; he "has exhausted all the remedies available to him within the defendant corporate organization and has no adequate remedy at law."

For a second cause of action, Marku says: he made demand in writing on the corporate defendant on July 15, 1952, for an inspection of the books and records of the corporate defendant, which demand was refused; he was told he could examine the books and records at the convention to be held in Lorain, Ohio, in September, 1952; he presented himself at the convention as a delegate of his member society, and again asked to see the books, records and financial reports of the corporate defendant, which request was again refused; the corporate defendant is wilfully withholding from the plaintiff, Marku, information in which this plaintiff has an interest.

The prayer of this petition asks that the corporate defendant and the individual defendant officers be enjoined from "denying and/or depriving the plaintiff of any or all of his rights, interest and privileges as a member of the society 'Traian & Iuliu Maniu' and the corporate defendant 'The Union & League R. S. A., Inc.,' directly or indirectly or in any manner whatsoever"; that plaintiff, Marku, be restored to all of his rights as a member in such societies; and that a mandatory injunction issue, requiring the corporate defendant and the appropriate officers thereof "to permit the plaintiff and his attorney and agents to inspect all of the books, records and accounts of the defendant corporation, Union & League R. S. A., Inc.," etc.

A joint answer to this amended petition has been filed by the defendants, in which they say that: plaintiff, Novak N. Marku, "is not a member of the defendant corporation, the Union & League of R. S. A., Inc., having been excluded by the convention held September 5, 1952"; this convention refused to accept plaintiff, Marku, as a delegate or member of the convention; the plaintiff, Marku, did not, as an officer of his branch society, file a proper loyalty affidavit, but did mislead his branch society "Traian & Iuliu

Maniu" by forwarding to the corporate defendant an improper loyalty affidavit, in violation of the constitution, by-laws and regulations of the Union & League of R. S. A., Inc., and of "Traian Iuliu Maniu Society."

The defendants, by way of further answer, say that they "have no knowledge of any inquiry from this plaintiff as to any information he desired from the defendant corporation. They further allege that the fraternal insurance laws of Ohio provide the "manner in which plaintiff may procure information which he desires if it has been refused by the defendant corporation, and, therefore, plaintiff has an adequate remedy at law * * *."

As a second defense, the defendants say that: "* * * the plaintiff has not been denied his rights and has not complied with the constitution and by-laws, rules and regulations of the parent organization, the defendant corporation, the Union & League of R. S. A., Inc., and those of the subordinate society in which plaintiff was a member, and that the plaintiff has not exhausted all of his remedies within the organization as to his rights and that he has an adequate remedy at law."

Thereafter, the within action was heard in the trial court on the issues made by these pleadings, immediately following two companion actions. The testimony and evidence received in the companion cases (Nos. 643,431 and 643,463 in the Common Pleas Court, which were thereafter appealed and became No. 23,211 in the Court of Appeals, and have also this same day been decided by the Court of Appeals), so far as applicable herein, has been adopted as a part of the evidence in this case, and, together with additional testimony and evidence, comprises the record before this Court.

The record is long, involved, and replete with extraneous matters. Reduced to a single proposition, the

question in this case revolves around the validity of a loyalty affidavit sent by the corporate defendant herein to the branch society and their officers in 1951, for the purpose of having such loyalty affidavit executed by the officers elected to manage the affairs of the branch or member societies for the year 1952.

At the convention of the Union & League R. S. A., Inc., held at Youngstown, Ohio, in September, 1948, a resolution was adopted, providing that all officers of this corporate defendant and of its member societies should sign a loyalty affidavit. This resolution, adopted in the Romanian language, is (translated to English) substantially as follows:

> "The officers of the Union and League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not Communists; that they do not belong to any subversive organization which works against the Constitution and Laws of the United States of America."

A form of affidavit was later prepared by the officers of the corporate defendant, pursuant to authority granted by their constitution and by-laws; and, pursuant to a specific resolution of the convention, such affidavit was printed by the corporate defendant. This form of affidavit was executed by the proper persons without question or objection.

In 1951, for the officers elected to act in the year 1952, a new form of loyalty affidavit was prepared and forwarded to the member societies and their newly-elected officers. This new form of affidavit was prepared after an executive meeting in March, 1951, at which a resolution was adopted directed to those members who believe in subversive activities, whether Fascist, Nazi, Communist,

or other un-American. This meeting decided that no such member could be an officer of the corporate defendant or of a branch society.

The plaintiff herein, Novak N. Marku, did not execute such new loyalty affidavit, although he did sign a loyalty form under protest, after a number of requests by the officers of the corporate defendant to execute the loyalty affidavit, directed to him and the branch society of which he was a member.

Upon receipt of the signed but unexecuted loyalty form, sent to the Union & League R. S. A., Inc., by Marku, the officers of that body, the corporate defendant herein, requested that a delegate be sent by "Traian & Iuliu Maniu," the branch society, to a meeting of the executive committee to be held in Cleveland, Ohio, in March of 1952. The plaintiff, Marku, appeared at this executive committee meeting but was not accepted as a proper delegate of his society.

All of the proceedings of the several conventions and of the several executive committee meetings were reported in the official publication of the Union & League R. S. A., Inc. At the executive committee meeting in March, 1952, "Traian & Iuliu Maniu," and the plaintiff, Marku, were placed under "accusation" until the convention of 1952. It was after this action of the executive committee that Marku sought to examine the books, records and financial reports of the corporate defendant herein.

There is no need in this opinion to set out all of the various powers and duties of the corporate defendant, its officers, executive committee, member societies, and individual members. This Court has read and examined carefully the constitution and by-laws of the parent body, copies of which are made a part of the record. We do wish, however, to point out that, according to Article IV, Sec-

tion 6, of the by-laws, a member "under indictment or accusation by any forum of the member societies or of the central organization" was not eligible to be elected to office. In conjunction with this article and section, Article II, Section 13, of the by-laws, said:

> "The member societies shall elect their officers by secret ballot in the month of December of each year who shall be installed in office at the following January meeting. They shall report the names of their newly elected officers immediately after every election, to the central office for the approval of their qualifications. In case any newly elected officers shall not be qualified in conformity with the by-laws of the U. & L. R. S. A., Inc., the president or secretary shall notify the member society to that effect and a new election for that office shall be held at the following meeting. Any appeals by the member society as to the qualification of a newly elected officer must be made to the executive committee which shall have full power to make the final decision. In such cases the members or member societies are strictly forbidden to appeal to the civil courts."

If the officers had the authority to present to the member society and its newly-elected officers the new form of loyalty affidavit, which this plaintiff, Novak N. Marku, did not execute, then all action thereafter taken by the officers and executive committees of the corporate defendant in refusing to accept Marku as a delegate was proper under the constitution and by-laws of the voluntary association of which he, Marku, was a member, until such matter could be presented to the convention to be held in Lorain, Ohio, in September, 1952. At that convention, if the prior action taken by the officers and executive committee was lawful under the constitution and by-laws of the corporate defendant, Marku could not be a delegate or represent, on

the floor of the convention, his branch society. The action taken by the convention in voting his expulsion as a delegate, hence, was proper.

Under what authority and by what right could the new loyalty affidavit be required of Marku and the officers of "Traian & Iuliu Maniu"? This question must be answered in favor of the authority of the corporate defendant, for the following reasons:

First, by the authority of the resolution of the convention of September, 1948, it was directed that a loyalty affidavit of some form be presented to each newly-elected officer of the corporate defendant and the newly-elected officers of the member societies.

Second, the power, duty and authority to prepare a form of loyalty affidavit rested with the officers of the corporate defendant.

Third, loyalty not alone to the United States was in contemplation of the convention, but loyalty also to the corporate defendant and its member societies; hence, the officers and executive committee merely followed the form of eligibility for office set out in the by-laws (Article VI, Section 6), which were as follows:

> "The active members of the member societies who fulfill all the requirements of the constitution and by-laws, shall have the right to be elected to any office of the member society or to the central organization, excepting when the constitution and by-laws otherwise provide.
>
> "The following are not eligible to be elected to office:
>
> "(a) Those sentenced to prison for major crimes.
>
> "(b) Those who are found guilty of moral turpitude, and who have caused the member societies or the central organization any moral and material losses.

"(c) Those under indictment or accusation by any forum of the member societies or of the central organization."

We have, above, discussed the power and authority of the executive committee and the convention of September, 1952, to reject Novak N. Marku as an officer and a delegate of his branch society, "Traian & Iuliu Maniu." Did that convention have the right to expel Marku as a member of his society and cancel his benefit certificate or policy? (He was tendered the cash surrender value of his policy but refused to accept it.)

It is one of the declared purposes of the organization herein (Union & League R. S. A., Inc.), as provided by its constitution, Article III (a), "to compensate its members by means of benefits in case of injury and accident, and their beneficiaries in case of death." Only "active" or "passive" members may contract for benefits (insurance).

It is also provided in Article IV, Section 1, of the by-laws that "Every member is obliged to observe the constitution and by-laws of the U. & L. R. S. A., Inc." In accord with Article IX, Section 2, of the by-laws, "any changes, additions or amendments to said articles of incorporation, constitution and by-laws and rules and regulations of the central organization, duly made or enacted subsequently to the issuance of said benefit certificate, shall be binding upon the member * * *." It is also further provided in Article VII, Section 3, of the by-laws, that the regular convention of the U. & L. R. S. A., Inc., which is the highest governing body of this organization, may "punish by penalty, fine, passivity or expulsion, those found guilty of violating the constitution, by-laws or insurance laws; and it shall have the power to do and perform any and all other acts and things which it deemed essential to the welfare and perpetuity of the organization."

In the light of the broad powers of the convention of U. & L. R. S. A., Inc., and the action taken thereunder at the meeting held in Lorain, Ohio, in September, 1952, the appellant, Marku, was lawfully expelled, and his benefit certificate or policy properly cancelled.

Does Marku have a right to inspect the books, records and financial reports of the corporate defendant, as requested by him in July, 1952?

There is no specific provision in the constitution or by-laws which permits a member of a branch society to examine the books and records of the corporate defendant. Provision is made, however, by Article II, Section 11, of the by-laws for a member society to "request any information from the central office. The office shall promptly give written replies to all requests."

The statutes of Ohio with regard to fraternal insurance, in effect when Marku made his request to inspect the books, were Sec. 9462, *et seq.*, G. C.; and Sec. 9406 thereof gave to the superintendent of insurance power to examine into the affairs of the corporate defendant.

It should be remembered that the petition which seeks to compel such examination, was filed by Marku after he ceased to be a member of the society; and since we have determined that his expulsion and the subsequent cancellation of his benefit certificate were proper, this Court cannot order an examination of the records, even though we assumed that a member of a fraternal benefit society has such a right.

For the reasons above set out, the appellant, Marku, is not entitled to the relief he seeks in this Court.

The amended petition is dismissed, at the costs of appellant.

DOYLE, *P. J.*, and STEVENS, *J.*, concur.

(Judges of the Ninth District sitting by designation in the Eighth District.)

APPENDIX B.

Journal Entry of the Court of Appeals.

(No. 23,212—caption omitted.)

September 13, 1954:

This cause came on to be heard before this Court as a trial de novo, being an appeal on questions of law and fact of plaintiff-appellant, Novak N. Marku, from an order of the Court of Common Pleas of Cuyahoga County, Ohio, and was submitted to the Court on the original papers and pleadings, transcript of docket and journal entries in said court below, and, by stipulation, a transcript of evidence offered in the court below by plaintiff-appellant and of evidence offered by defendant-appellees in said court below when the trial of this cause was had in conjunction and together with two companion cases (numbers 643,431 and 643,463, which were combined and are now before this Court as Court of Appeals, Eighth District of Ohio number 23,211); on consideration whereof the Court finds, on the issue joined, in favor of the defendant-appellees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the amended petition of the plaintiff-appellant be, and the same hereby is, dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the costs of these proceedings shall be taxed against the plaintiff-appellant. To all of which appellant excepts. Cause remanded to the Common Pleas Court of Cuyahoga County for all further proceedings herein.

APPENDIX C.

Order of the Supreme Court of Ohio Dismissing Appeal as of Right.

Jan. 19, 1955:

It is ordered and adjudged that this appeal as of right be, and the same hereby is, dismissed for the reason that no debatable constitutional question is involved.

Appeal dismissed.

WEYGANDT, C. J., MATTHIAS, HART, ZIMMERMAN, STEWART, BELL and TAFT, JJ., concur.

APPENDIX D.

Opinion of the Court of Appeals in Carpatina Case.

No. 23,211.

IN THE COURT OF APPEALS.

STATE OF OHIO, CUYAHOGA COUNTY, SS.

UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,
Plaintiffs-Appellees,

v.

ELI COTOFAN, *et al.*,
Defendants-Appellants.

UNITED ROMANIAN SOCIETY CARPATINA,
Plaintiff-Appellant,

v.

UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,
Defendants-Appellees.

STEVENS, *J.*

This is an appeal on questions of law and fact from a judgment of the Court of Common Pleas of Cuyahoga County, in favor of The Union & League of Romanian Societies of America, Inc., et al.

The two cases above captioned were consolidated below, and are here presented as one appeal.

The first action captioned above seeks an accounting and restitution of the funds and property of United Romanian Society Carpatina, alleged to be in the possession of appellants, and that such appellants be restrained from holding themselves out, or acting, as duly

constituted officers of the Society; that the duly elected officers of the Society be declared to be such, and allowed to have possession of the Society premises for the purpose of holding the Society's regular annual election.

The second above captioned action seeks the reinstatement of the excluded and passive officers of the Society to full membership in the Union, and a declaratory judgment as to the validity of the loyalty affidavit hereinafter mentioned.

Appellee Union & League of Romanian Societies of America, Inc., is a fraternal benefit association, chartered under the laws of Ohio, as also is its subordinate society, United Romanian Society Carpatina.

At the Union convention held at Youngstown, Ohio, in September, 1948, a resolution authorizing the use of a loyalty affidavit was unanimously approved and adopted —which, translated, is substantially as follows:

> "The officers of the Union and League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not Communists; that they do not belong to any subversive organization which works against the Constitution and Laws of the United States of America."

It was then by unanimous vote resolved that the Union & League should print the forms of the declaration.

Article VII of the 1939 bylaws of the Union & League R. S. A., Inc., provided:

> "Section 3. The regular convention shall be the legislative and governing body of the U. & L. R. S. A., Inc., and is vested with full power and authority to make, alter, repeal or amend the Constitution, Bylaws and all laws, rules and regulations for the government, management, discipline and control of the Organization, or of any member society. When in

session it shall possess jurisdiction over all member societies and shall have power to enforce the laws, rules and regulations enacted by the said convention or any regulation or order made by the Executive Committee; it shall decide upon and punish by penalty, fine, passivity or expulsion, those found guilty of violating the constitution, bylaws or insurance laws; and it shall have the power to do and perform any and all other acts and things by it deemed essential to the welfare and perpetuity of the Organization. When the convention is not in session said supreme authority shall be vested in and exercised by the Executive Committee except where otherwise provided in this Constitution and bylaws."

Article VI provided:

"Section 1. The Executive Committee shall consist of the President, First Vice-president, Second Vice-president, Secretary, two Auditors and seven Trustees, elected by the regular convention. The Executive Committee is the forum which supervises the affairs and the regular proceedings of the organization from one term to another of the regular conventions."

"Section 3. The Executive Committee shall have the following duties: * * *.

"(d) Receive and consider all the appeals and claims of the members and of the member societies and resolve them in conformity with the provisions specified in the constitution and bylaws."

Article IV provided:

"Section 6. The active members of the member societies who fulfill all the requirements of the constitution and bylaws, shall have the right to be elected to any office of the member society or to the central organization, excepting where the constitution and bylaws otherwise provide.

"The following are not eligible to be elected to office:

"(a) Those sentenced to prison for major crimes.

"(b) Those who are found guilty of moral turpitude, and who have caused the member societies or the central organization any moral and material losses.

"(c) Those under indictment or accusation by any forum of the Member Societies or of the Central Organization."

We are not here concerned with the form of the loyalty affidavit prior to the modification of 1951, nor are the first three sections of the 1951 affidavit, prepared and promulgated by the executive committee, under attack; it is the last three paragraphs of the 1951 affidavit which give rise to controversy under consideration. Those sections follow:

"4. I have not been sentenced to prison for a crime nor have I been found guilty of moral turpitude, nor have I caused the member societies or the central organization any moral and material loss.

"5. I have not ever been found guilty of mishandling or misappropriating public funds of any social, fraternal or religious organization.

"6. I am not now a suspended or passive (inactive) member of the Union and League of Romanian Societies of America."

The officers of the Society Carpatina did not sign the new affidavit, but instead executed the old form of affidavit, and sent it to the Union & League R. S. A. The Union, in turn, by letter, advised Carpatina that it could not approve the local officers of Carpatina, and requested Carpatina to send one or two delegates to a meeting of the executive committee of the Union to be held on March 8, 1952.

As a result of that executive committee meeting, the executive committee refused to approve the officers of Carpatina who had been elected in December, 1951, and suspended Carpatina until the national convention to be held at Lorain, Ohio, in September, 1952.

At the national convention in Lorain, the convention set up a grievance committee, to which was submitted charges, drawn up by the national president of the Union against the twenty-five officers of Society Carpatina, involving their failure and refusal to sign the amended loyalty affidavit.

In the absence of the officers of Carpatina, who, because of their Society's suspension, were permitted no voice in the convention, the grievance committee recommended suspension or expulsion of all of them. The national convention approved the recommendation of the grievance committee, and placed "in passivity" twenty-four officers of Carpatina, and expelled one.

That is the order which gives rise to both of these actions.

We hold, under the provisions of the constitution and bylaws of the Union above set forth, as follows:

1. That the executive committee had ample authority to prepare, promulgate, and require to be signed, the loyalty affidavit of 1951.

2. That the failure of the officers of Carpatina to sign and forward the affidavit in question, as required, justified the suspension imposed on Carpatina by the executive committee.

3. That the action of the convention in creating, and submitting to a grievance committee, the charges preferred against the officers of Carpatina, was entirely within the constitutional authority of the convention.

4. That because of the suspension of Carpatina, its officers were not permitted to participate in the convention at Lorain, which was as provided in the constitution and bylaws of the Union.

5. That the action of the convention in placing twenty-four of said officers "in passivity" and expelling one, was within the constitutional authority of the convention, and the punishment within the limits fixed by the constitution.

As the result of the foregoing conclusions, we hold that plaintiff Union & League, etc., is entitled to the relief which it seeks; that United Society Carpatina and its officers are not entitled to the relief which they seek, and that their petition should be dismissed.

A decree may be prepared carrying into effect the foregoing orders. Appellants shall pay the costs of these proceedings.

DOYLE, P.J., and HUNSICKER, J., concur.

(Judges of the Ninth District sitting by designation in the Eighth District.)

APPENDIX E.

Affidavit Used by Union & League for 1948, 1949 and 1950 (R. 57).

AFFIDAVIT

FOR USE IN CONFORMITY WITH RESOLUTION PASSED AT THE 32nd NATIONAL CONVENTION OF THE "UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC.," AT YOUNGSTOWN, O., ON SEPT. 5-9, 1948.

(Must be filed in duplicate within seven days after election or appointment to office.)

STATE OF _____ }
COUNTY OF _____ } ss.

We the undersigned duly elected officers of the _____ _____Branch No. _____ of The Union & League of Romanian Societies of America, Inc., with branch office located at _____ _____.

Being first duly sworn according to law, depose and say that:

1. I am not a member of the Communist Party or affiliated with such party.

2. I am not a member of the International Workers Order (I. W. O.) nor affiliated with any organization which has been or is subversive or identified as Communist, Nazist, or Fascist or in any way un-American or contrary to the American principles and ideals of free government.

3. I do not believe in and I am not a member of, nor do I support or intend to be a member of any organization that believes in or teaches the overthrow of the United

States Government by force or by any illegal or unconstitutional methods.

* * * * *

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

(Notary Public)

My commission expires _____.

(SEAL)

WARNING: The attention of the person filing this Affidavit with the Union & League of Romanian Societies of America and the respective local Society, is directed to the Federal and State Criminal Code, which provide that any person willfully making or causing to be made any false or fraudulent statements or representations, shall be punishable as provided by such Federal and State laws.

Approved this _____ day of _____, 19__, at Cleveland, O.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC.,

_____

President.

_____

Secretary.

(SEAL)

APPENDIX F.

Revised Affidavit of 1951 (R. 46, 51).

(Heading omitted—same as that of Appendix E.)

I the undersigned duly elected delegate to represent the _____ Branch No. _____ with branch office located at _____

_____

at the 34th National Convention of the Union & League of Romanian Societies of America, Inc., at Lorain, Ohio, beginning Sunday, August 31, 1952.

Being first duly sworn according to law, depose and say that:

1. I am not nor have I been a member of the Communist Party or affiliated with such party.

2. I am not nor have I been an active member or officer nor have I actively supported the International Workers Order (I. W. O.) nor have I been affiliated with any organization which has been or is subversive or identified as Communist, Nazist or Fascist or in any un-American or contrary to the American principles and ideals of free government.

3. I do not believe in and I am not a member of, nor do I support or intend to be a member of any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

4. I have not been sentenced to prison for a crime nor have I been found guilty of moral turpitude nor have I caused the member societies or the central organization any moral and material loss.

5. I have not ever been found guilty of mishandling or misappropriating public funds of any social, fraternal or religious organization.

6. I am not now a suspended or passive (inactive) member of the Union and League of Romanian Societies of America.

NAME ADDRESS CITY AND STATE

AGE CITIZENSHIP CITIZENSHIP DATE

Subscribed and sworn before me this ____ day of _____, 19_____.

_____

(Notary Public)

My commission expires _____

(SEAL)

Certified this _____ Day of _____, 1952, at _____ Society _____, Branch No. _____.

_____

Local Branch President

_____

Local Branch Secretary

WARNING: The attention of the person filing this Affidavit with the Union & League of Romanian Societies of America and the respective local Society, is directed to the Federal and State Criminal Code, which provide that any person willfully making or causing to be made any false or fraudulent statements or representations, shall be punishable as provided by such Federal and State laws.

Approved this _____ day of _____, 19__, at Cleveland, O.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC.

_____

National President

_____

National Secretary

(U. & L. OF R. S. A. SEAL)

Mail this affidavit in duplicate within seven days after election, to Central Offices for certification.

FILED
JUL 16 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 192

NOVAK N. MARKU,

Petitioner,

vs.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,

Respondents.

BRIEF FOR RESPONDENTS
In Opposition to Petition For a Writ of Certiorari To the Supreme Court of Ohio.

JOSEPH J. CRACIUN,
106 High Street, N. W.,
Warren, Ohio,

S. S. FEKETT,
Dollar Bank Bldg.,
Youngstown, Ohio,

RICHARD H. WOODS,
1019 Williamson Bldg.,
Cleveland, Ohio,
Attorneys for Respondents.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-9647

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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. _____.

NOVAK N. MARKU,

Petitioner,

vs.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,

Respondents.

BRIEF FOR RESPONDENTS
In Opposition to Petition For a Writ of Certiorari To the Supreme Court of Ohio.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

The Respondents, The Union & League Romanian Societies of America, Inc., et al., as its reply to petitioner's Writ of Certiorari to review an order and judgment of the Supreme Court of Ohio rendered in this cause on January 19, 1955, presents the following:

QUESTIONS PRESENTED.

1. Can a Non-Profit Corporation organized under the Fraternal Benefit Insurance Laws of the State of Ohio require its members to execute a loyalty affidavit in conformity with its Articles of Incorporation, Constitution and By-Laws.

2. May such an organization take disciplinary action by passivity, suspension of rights or by expulsion from the organization, punish its members for failure to comply with its Constitution and By-Laws.

STATEMENT OF FACTS.

The Statement of Facts as presented by petitioner are partially accurate and therefore we feel that in order that the Court know the established facts it should be pointed out that any changes in the affidavit as submitted in December of 1951, as referred to on page 6 of Petition for Writ of Certiorari were made by the national officers with the approval of the Executive Committees held in 1951 and that the new provisions, 4, 5 and 6 of the affidavit referred to on page 7 to Petition of Writ of Certiorari were a part in substance of the Constitution and By-Laws of the Union & League.

The Carpatina Lodge was not refused permission to vote for the national officers as stated on page 8 of Petitioner's Writ of Certiorari, arbitrarily, but that the Carpatina Society was permitted to state its case as provided in the Constitution and By-Laws under the program of the Convention and that the Carpatina Lodge did have ample notice of hearing by the Grievance Committee of the Convention and that John R. Vintilla, Attorney for petitioner herein, was one of the representatives of the Carpatina Lodge at the meeting of the Grievance Committee.

Further, all of the twenty-five officers who were charged had been represented by John R. Vintilla, at least at two of the Executive Committee meetings held prior to the Lorain, Ohio, Convention in September, 1952, and at that Convention, he represented them before the Grievance Committee.

During the convention, John R. Vintilla, as representative for the Carpatina Lodge and the twenty-five officers was permitted to make his statement in defense of their conduct, as a Society and as individuals.

On page 10 of Petitioner's Writ of Certiorari, second and third paragraphs, petitioner states that notice was sent to the Canton Society to send one or two delegates who would represent the Canton Society at the Executive Committee. The petitioner presented himself as a delegate and representative of the Canton Society and was not permitted to speak or be heard in behalf of said Society and/or for himself on his appeal.

The facts are: He had appeared at nearly every Executive Committee meeting of the Union & League since 1948 because of some violation of the Constitution and By-Laws of the Union & League and he was given an opportunity to speak therein and he was present at the last Executive Committee meeting. Therefore, his appeal could not be considered to change the prior rulings.

Further, as set out on page 12 of Petition of Writ of Certiorari, the petitioner was denied the right to be seated and to participate as a delegate for the Canton Society by reason of the Constitution and By-Laws of the Union & League which provide that suspended officers could not be delegates.

A letter was sent in compliance with Article II, Section 9, page 18 of the Constitution and By-Laws of the Union & League, which provides in part:

> "It is the duty of member societies to report the names of their newly elected delegates to the central offices within seven days from the date of their election.
>
> In case the newly elected delegates are not qualified in conformity with the By-Laws of the organiza-

tion, the Secretary shall immediately notify the member society to proceed with a new election.

Failing to comply with this request shall have the effect of eliminating the member societies representation at the convention."

Petitioner states on page 13 of Petition of Writ of Certiorari at the top that he was never notified that the convention or any other body was going to proceed against him as an individual member. The record below will show that he was present at the convention, that he refused to go before the Grievance Committee to present his case and that he did appear before the convention at Lorain, Ohio in September, 1952 and represented the Canton Society and himself.

Further that the Petitioner caused such a disturbance during the convention that he was asked to leave. Upon his refusal to do so he was escorted out of the convention hall.

To further aid the court in this matter, Respondents present the following condensed chronological statement of operative facts:

1902	Carpatina Society founded and incorporated.
1906-8	Union & League founded and incorporated.
	Canton Society founded and incorporated.
1910	Carpatina Society joins the Union & League as a subordinate lodge or society.
1939	At Union & League convention at Cleveland, Union & League By-Laws amended.
Sept. 1948	At Union & League convention at Youngstown first change of Union & League officers in twenty years effected;

resolution authorizing the use of a loyalty affidavit was unanimously approved (R. 135, 136, 767); the Canton and Carpatina Societies and the Petitioner were present and represented.

Nov. 1948 — Officers and general counsel of Union & League drafted a loyalty affidavit (R. 945) and sent same to all subordinate societies to be executed and returned within seven days in accordance with by-laws Art. II, Sec. 13 p. 19 (R. 943). Canton Society returned its affidavits duly executed.

March 1949 — After numerous requests, Carpatina Society returned its affidavits duly executed. No disciplinary action taken by Union & League for delay.

Aug. 1949 — After due notice and opportunity to be heard at the Executive Committee hearing, Carpatina Society and Canton Society suspended for refusal to take in new members, and failure to comply with constitution and by-laws.

Nov. 1949 — Officers and general counsel of Union & League amend form of affidavit so that several officers may sign in one instrument (R. 946) and sent same to all subordinate societies as per 1948, Loyal Resolution. Canton and Carpatina Societies officers duly executed and returned affidavits. Approval of officers of Carpatina Society and Canton Society withheld because of suspension of Societies on charge of refusing to take in new members.

Sept. 1950 — Union & League convention, Windsor, Ontario. Delegates of suspended Carpatina and Canton Societies heard, fined, fines suspended and societies reinstated

to good standing. Resolution adopted to include all employees of Union & League as to affidavit requirement.

Nov. 1950 — Affidavits as per 1949 sent out to, executed by, and returned by all subordinate societies.

March 1951 — After president's report to executive committee that I. W. O. members were infiltrating societies of the Union & League inasmuch as the State of New York was dissolving the I. W. O., the executive committee unanimously adopted two resolutions requiring the loyalty affidavits to be changed pursuant to Art. VII, Sec. 3, p. 36 By-Laws (R. 943).

Nov. 1951 — New affidavits (R. 947) drafted and sent to all subordinate lodges and to all employees.

Dec. 1951 — Carpatina and Canton Societies sent to Union & League home-made affidavits executed by officers and prepared by petitioner, based upon old 1950 form. These societies notified of disapproval by Union & League and requested to send representatives to March 1952 executive committee meeting.

March 1952 — Executive committee meeting attended by representatives of both societies. Representatives would not agree with committee ruling, hence officers of the two societies and the societies were suspended by action of the committee until they would have an opportunity to be heard at the convention.

July 1952 — Union & League officers as per By-Laws notify Carpatina and Canton Society delegates elected to Lorain, Ohio convention 1952, not qualified, must elect new delegates, societies failed to do so.

Sept. 1952 Union & League Convention, Lorain, Ohio. In due course of the order of business of the convention, the representatives of the Carpatina and Canton Societies were given opportunity to present their cases as to suspension. Convention voted to exclude these representatives as delegates. These representatives appeared before and were heard by the Grievance Committee which recommended to the Convention that certain members be suspended, certain excluded and that the societies shall hold an election of officers within sixty days on pain of exclusion. The recommendations of the committee were approved by the convention. At all times herein, since the beginning of 1952, the Petitioner was one of the representatives of the Canton Society. Convention unanimously adopted the current form of affidavit and incorporated into the new by-laws along with explicit power in the executive committee and officers to amend the affidavits, Amended By-Laws, pp. 33, 34, 35 (R. 919).

Oct. 1952 Union & League officers, pursuant to amended by-laws and resolution of convention, upon due notice called meetings for election of officers of both societies. In each instance the meetings were barred to Union & League Officers.

Oct. 1952 Another meeting called at both societies as per above. Canton Society duly elected officers. Carpatina Society elected new officers, Canton officers complied with affidavit requirement immediately as did newly elected Carpatina officers. The old Carpatina society

officers who were under suspension refused to turn over books and premises of society to new officers.

Dec. 1952 — Union & League Carpatina Society filed an action for injunction against suspended officers of the society cause No. 643,431, Common Pleas Court, Cuyahoga County, then, suspended officers of the Society filed cause No. 643,463 against Union & League. Judge Lybarger ordered a meeting on December 14, 1952. Such a meeting was held and officers elected who were under suspension and who continued to refuse to sign affidavit.

The foregoing is the exposition of the facts as shown by the testimony and exhibits, stripped of personal acrimony, the bad feelings and recriminations between the parties and the counsel in the cases below. On the behalf of the Union & League and its officers there is no showing of fraud, collusion or conspiracy in the evidence.

ARGUMENT.

I. THE DECISION OF THE STATE COURT OF APPEALS CORRECTLY HELD THAT THE RESPONDENT HAD THE AUTHORITY AND RIGHT TO REQUIRE THE PETITIONER TO EXECUTE THE REVISED LOYALTY AFFIDAVIT OF 1951, AND THE RIGHT TO EXPEL PETITIONER AND REFUSAL TO EXAMINE BOOKS OF RESPONDENT.

The Union & League regards the matters in question in this litigation to be confined to Ohio statutory and case law referring to fraternal benefit associations and to no other types of associations authorized by statutes other than those appearing in section 3921 of the Revised Code. The cases and interpretations of this chapter and its predecessor have been legion and amply define the rights of litigants such as these.

The issues of this litigation are few and simple, though they may appear at first blush to involve a complexity of subsidiary questions. Devoid of complications, the real issues are two-fold:

A. Did the Union & League have the legal authority to so promulgate and require a loyalty affidavit?

B. Assuming the answer to the first question is in the affirmative, does the refusal to execute such an affidavit under oath warrant disciplinary action against a society or its officers?

A. Did the Union & League Have the Legal Authority to So Promulgate and Require a Loyalty Affidavit?

The legality of the affidavit has several aspects which involve the inherent nature of the affidavit and the method of its adoption.

1. Did the Union & League have the authority to authorize by resolution a loyalty affidavit?

In *Ingram v. National Union et al.* (1906), 17 O. D. 227, 232, affirmed without opinion at 80 O. S. 735, the Court said:

> "The National Union (a beneficial association) is an Ohio Corporation, and therefore we must look to the laws of this State for the purpose of determining what are its powers." (Parentheses ours.)

In this case the court denied an injunction aimed at a new expense fund, saying further at p. 231,

> "But within proper limitations no court will interfere with legislation (of the association) that is properly inferable from the inherent nature of the organization itself." (Parentheses ours.)

Further the court quoted as follows at p. 231:

> "We understand the law to be, that when a person becomes a member of an association of this kind, he becomes subject to the laws, rules and regulations of such association, and that he cannot properly resort to the courts for relief or redress, unless there has been an invasion by the society of some property right of his, as by the breach of some vested contract made with him, or when some act has been done by the society without any authority, which infringes upon some property right of his. That if by the constitution of such association, or the rules and regulations legally adopted by it, any body or judicatory thereof has the clear right to legislate in regard to the interests of such association, or to administer its affairs according to its judgment or discretion, and to alter or change its rules and regulations, the members of the association are bound thereby."

The authority of the Union & League a fraternal benefit association to govern itself is set out in R. C. Section

3921 and its predecessor. R. C. Sec. 3921.02 provides as follows:

> "Any society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members are elected, initiated, and admitted in accordance with its conconstitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches are required by the laws of such society to hold regular or stated meetings at least once in each month, is operating on the lodge system."

The very essence of a fraternal benefit association is its voluntary character and the contractual obligations entered into by its members.

In *Ohio ex rel. Pope v. Castle Excelsior* (1883), 10 W. L. B. 2, the Court held on p. 3:

> "It is the policy of the law to sustain organizations of this character, benevolent societies, it being considered by the courts that they are promotive of good, and for the well being of the citizen. Ordinarily they have a constitution and by-laws for their government, and the courts have held it to be a contract on the part of the member when initiated, that he will submit himself to the rules and regulations and general laws of the order; and where they provide the means whereby a member may seek a redress of his grievances for anything done against him in the order. It has been held by the courts that he assents when he becomes a member, and contracts that he will abide by the decision of the order. In reviewing their proceedings, courts will not judge them nicely where the objection is that there was some irregularity in the mode of procedure, where perhaps the society has not strictly observed the rules of evidence that obtain in civil courts. Nor will the civil courts look into the cause of the complaint on which the member is tried, if it appears that the member was

arraigned for a complaint recognized by the constitution and laws, feeling that it is for the best interests of society and of the party concerned that he should abide by the decision of the order."

The loyalty affidavit is by purpose and provision in conformity with the articles of incorporation of the Union & League (R. 918) which provide in the purpose clause as follows:

4. "It shall likewise establish schools where the Romanians may learn the English language and their duties toward their adoptive country; in short

5. "It shall endeavor at the same time, to make of the Romanians, worthy sons of their illustrious race, and useful citizens of their new country."

Indeed, the constitution of the Union & League provides in Article III, paragraph (b) p. 4 (R. 919):

"To maintain and promote the national sentiment by stimulating love for Romania and loyalty to the United States of America among its members."

In cases with analogous facts, a provision of an association excluding benefits to an insane person was upheld in *Kent v. Odd Fellows* (1885) 14 W. L. B. 237, and in a case involving the requirement that a member be and continue after admission to be a "practical Roman Catholic woman." The court upheld the association provision and exclusion of one who, after admission, has married a divorced man. *Koukolicek vs. Ladies Catholic Benefit Ass'n.* (1912), 41 O. C. C. 312.

If Ohio Courts have held that a religious limitation be a stringent provision in the by-laws of an association, despite the state and national constitution, how can the partisans of the societies herein urge that reaffirmation of loyalty by means of an affidavit is any way violative of a member's rights.

2. Was the loyalty affidavit properly adopted and modified by the Union?

1. The resolution authorizing a loyalty affidavit as unanimously adopted by the 1948 convention is as follows:

> "President, Mr. Stroia, reads Subdivision 1, a resolution from the Society Unirea and Plngarul.
>
> "Subdivision (2). The officers of the Union & League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not Communists; that they do not belong to any subversive organization which works against the Constitution and laws of the United States of America.
>
> "The motion of Mr. Comanita, seconded by Mr. Barber, is voted upon and is unanimously approved, resolving that the Union & League shall print the forms of the declaration." (R. 135, 136.)

2. Under the constitution and by-laws of the Union & League, the executive committee has the following powers pursuant to Article VII, Sec. 3, pp. 51, 52 (R. 919):

> "The regular convention shall be the legislative and governing body of the Union & League and is vested with full power and authority to make, alter, repeal or amend the constitution, by-laws and all laws, rules, and regulations for the government, management, discipline and control of the organization, or of any member society.
>
> "* * * When the convention is not in session said supreme authority shall be vested in and exercised by the executive committee except where otherwise provided in this constitution and by-laws."

This provision of the constitution and by-laws has been approved by the Superintendent of Insurance of Ohio pursuant to R. C. Sec. 3921.27 and its predecessor for many years before these presents.

The inescapable conclusion is that the loyalty affidavit and its revisions are authorized by the organic acts and laws of the Union & League.

3. The Loyalty affidavit in its original form was signed by all the 74 societies branch, including these here complaining, in the years 1949 and 1950. At this late date, they would seem to be estopped from objecting to the principle. Indeed, the testimony gives no basis for such objection. Nor did the two societies object to the changes in form made in 1949 and the resolution of the 1950 convention to include employees thereunder. Their first real objection appears after November 1951 when the affidavit was modified.

4. What, then, are the 1951 changes? In the first three sections the words "nor have I been" were added to the words "am not" so as to add the past to the present context in order to bar past members of the now defunct I. W. O. who otherwise could sign the present tense of the old affidavit with impunity. The testimony shows no vociferous objections to these first three changes, and the litigants on behalf of the societies seemed satisfied with them.

The second three sections of the affidavit are substance new to this instrument, but nonetheless, substance which is provided for in the Constitution and by-laws which the members swore to uphold in practically identical words. Article IV, Sec. 6, pp. 30, 31 (R. 919). This article has been in effect since before 1939. The pleadings show that the complaining litigants on behalf of the societies admit that by the constitutions and by-laws of those societies an applicant for membership contracts and swears to uphold the constitution and by-laws of the Union & League.

Of the last three, or new, provisions of the affidavits, the only one shown to be controversial by the evidence is that referring to "moral turpitude." On page 9 of the Journal Entry of the trial court, the judge finds it "fantastic" that an attorney who is also a litigant and the advisor of the society is incapable of explaining the term to his clients and colleagues.

5. The attitude of the Union & League is that the only affidavit in question in these actions is that of 1951. The law and facts show that it was properly authorized and revised. To add further strength it was specifically resolved in the 1952 Convention.

3. The present litigation is based upon the affidavit in effect since the 1952 Convention.

The societies cannot complain of the validity of this affidavit by reason of their exclusion from the convention, as such action was pursued in a democratic manner in conformance with the laws of the State and the Union & League. If their exclusion would de deemed to invalidate the affidavit, then there would be no basis at all for a democratic process in the Union & League. 29 *O. Jur.* pp. 241, 242. As long as the litigants on behalf of the societies seek inclusion and enjoy the benefits of the Union & League, they must be bound by its actions. Consider that 72 out of the original 74 societies unanimously adopted the revision.

B. Assuming the Answer to the First Issue is in the Affirmative, Does the Refusal to Execute Such an Affidavit Under Oath Warrant Disciplinary Action Against a Society or Its Officers?

The leading Ohio case on the second issue is *Hershiser v. Williams* (1892), 6 O. C. C. 147, affirmed without opinion 53 O. S. 663. This case is on "all fours" with the one at bar. The suit was to enjoin expulsion from a fraternal benefit association, alleging conspiracy to prevent the petitioners from voting. They had been accused because they had joined another lodge and sought to enjoin their own trial. The court upheld defendant's demurrer, saying the equity will not interfere. Many other cases upholding these principles will be found in 29 *O. Jur.* p. 222 *et seq.*

In *Ohio ex rel. Pope v. Castle Excelsior* (1883), 10 W. L. B. 2, the court refused to give effect to an expelled member's benefits, saying on p. 2:

> "There may have been slight irregularities (in the hearing and trial), but if there were any irregularities, they were not prejudicial to him but rather in his interest." (parentheses ours.)

In *Kent v. Odd Fellows* (1885), 14 W. L. B. 237, the foregoing principle was given effect by these words at p. 239:

> "Upon that point I think the authorities all agree that the adjudications of the Order itself are final, and of course, the law will not intervene to set them aside, for more irregularities or errors of judgment in the proceedings where they have acquired jurisdiction of the person and have jurisdiction of the subject matter, and are acting within the scope of their authority."

The objections to the substance of the revised affidavit set out in the amended petition of the litigants for the society are without force and unsupported by evidence.

The best evidence in cause No. 641,088 filed in the lower court by Petitioner is the unverified 1952 form affidavit which he himself offered in evidence and was duly received therein (R. 827, 828, 829, 830, 831, 990). This development of the evidence reduces him to the same position as the other individual litigants on behalf of the societies. As an expelled member who refused to sign the affidavit, he is not entitled to any of the rights of membership. Besides, he is further subject to R. C. 3921.32 and its predecessor which confers the right to inspect books of fraternal benefit associations on the Superintendent of Insurance.

On the basis of the above facts and law, the Common Pleas Court of Cuyahoga County, the Court of Appeals, Eighth Judicial District, State of Ohio, Cuyahoga County upheld the right of the Respondents to proceed as they did requiring the signing of the December 1951 Loyalty affidavits and the right to expel petitioner Novak Marku as a member and of his society and cancel his benefit certificate or policy. (He was tendered the cash surrender value of his policy but refused to accept it.)

The record is clear that the petitioner Novak Marku was given every opportunity to present his side of the story, before the Executive Committees since 1948 up to and including the Lorain Convention of 1952 concerning various violations of the Constitution, by-laws and regulations.

It is a well established matter of law that a member of an organization such as the Union & League is bound by the constitution, by-laws and the rules and regulations.

> "Members are bound by principle and rules of government of the policy which they have adopted or may adopt." *Hershiser v. Williams* (1892), 11 O. Dec. Rep. 76; 53 O. S. 663, 44 N. E. 1138.

Petitioner has raised the question of the mode of procedure in his matter. We contend that the evidence presented to the court has been clear and not rebutted, that an accused member or society has a right to appeal to the executive committee as provided in the Union & League by-laws, Article VI, Section 3, paragraph d which provides as to duties of Executive Committee.

> "d—Receive and consider all the appeals and claims of the members and of the member societies and resolve them in conformity with the provisions specified in the constitution and by-laws."

If the member or member society is not satisfied with the judgment of the Executive Committee, he or they may appeal to the convention. This, the petitioner has done in all instances so that each Executive Committee and convention, he appeared before, had jurisdiction over him as a member and therefore could make valid rulings as to his status as a member in conformity with the constitution and by-laws of the Union & League. We might add that at no time during this litigation has the petitioner declared that he was denied any rights under the existing constitution and by-laws of the Union & League and which he has sworn to be governed by when he became a member.

Article III, Section 3 of the By-Laws provide:

> "Section 3: The regular convention *shall be the legislative and governing body of the U. & L. R. S. A. Inc.* and is vested *with full power and authority to make, alter, repeal or amend the constitution, by-laws and all laws, rules and regulations* for the government, management, discipline and control of the organization, or of any member society. When in session it shall possess jurisdiction *over all member societies and members* and shall have power to enforce the laws, rules and regulations *enacted by the said convention or any regulation or order made by the execu-*

tive committee; it shall decide upon and punish by *penalty, fine,* passivity or expulsion, those found guilty of violating the constitution, by-laws or insurance laws; and it shall have the power to do and perform any and all other acts and things by it deemed essential to the welfare and perpetuity of the organization. When the convention is not in session said supreme authority shall be vested in and exercised by the executive committee except where otherwise provided in this constitution and by-laws." (Italics ours.)

This has been the procedure since the founding of the organization since 1908:

"Where the articles of association are silent as to the mode of proceedings to expel a member, the society is left to adopt its own mode." *Shaefer vs. Aurora Relief Soc.* (1877), 7 O. Dec. 334, 2 W. L. B. 125.

"The court said that it was not necessary to require the corporation to specify by its rules or by-laws every act which could be made the basis of expulsion for that would be unreasonable and impracticable; that it would be impossible for any organization such as a social or fraternal club or any club to continue its existence and carry out its purposes under such requirements." *Cheney vs. Ketcham* (1898), 15 N. P. 139; 7 O. D. 183.

Along these same lines it was necessary for the defendant corporation, the Union & League, to expel the Petitioner, Novak N. Marku, for from the first executive committee directive in 1949 to the fifth day of September, 1952, at the Lorain Convention the plaintiff would not comply and insisted upon changing the rules to suit his own purposes in that he did not want to go by the procedure established. The Petitioner insisted that the Respondent, the Union & League, had to accept the officers he wanted, had to accept the false affidavit of which he was the author, and that the convention had to proceed in the hearing of

his case in the manner in which he determined and not by the constitution, by-laws, rules and regulations of the Union & League.

Therefore, it is within the power of a fraternal society to discipline, fine and expel its members for their conduct in the affairs of the organization where there was sufficient cause and we contend that there was such sufficient cause for the Respondent, the Union & League, at its 1952 convention to expel the Petitioner, Novak N. Marku.

"Inherent power exists in corporation not for profit to discipline and expel members for sufficient cause when necessary to the good order and government of the corporate body." 35 *O. Jur.* 331.

"Inherent power exists in a corporation not for profit, incident and necessary to its very existence for the purpose for which it was created, to discipline or expel one of its members for sufficient cause." *Cheney v. Ketcham* (1898), 5 O. N. P., 139; 7 O. D. 183; 10 *O. Jur.* 1133.

"When it is necessary to the good order and government of the corporate body." *Shaefer vs. Aurora Relief Soc.* (1877), 7 O. D. Rep. 334. 2 W. L. B. 125.

"Speaking generally, the internal government and management of the affairs of a mutual benefit society are immune from judicial interference, or as otherwise stated the courts will not interfere in the affairs of benevolent and beneficial associations when question or discipline, doctrine, or internal policy alone are involved." *Myers vs. Jenkins* (1900), 63 O. S. 101; 57 N. E. 1089; 81 A. Lit. Rep. 613; 19 *Ruling Case Law* 1225—No. 38.

"Accordingly in all matters of policy discipline or the internal economy of the organization the rules by which the members have agreed to be governed constitute the charter of their rights and the courts will decline ordinarily, to take cognizance of any matter arising with reference thereto but will leave all such

questions to be settled in the manner pointed out by the regulations of the order." 10 *Ruling Case Law* 1224—No. 37.

"The principle that equity will not take cognizance of political issues applies also to rights asserted under the constitution and rules of voluntary associations such as fraternal orders so long as the internal laws of the body are observed." 16 *O. Jur.* 205.

"Nor will a court of equity interpret the organization law, ordinances, and by-laws or a mutual benefit society, to ascertain the degree of conformity of the subordinate bodies to the parent body, and specifically to restrain and direct the officers and agents of such subordinate bodies in the performance of the duties devolved upon them as such. This would amount to the administration of their internal affairs, and there is no warrant for such an interference by the equity courts. So, as a general rule, whenever matters of complaint relating to the internal management of an association, or matters of economy about which honest men differ, come up before them, the courts are slow to grant relief, and never interfere, unless the testimony is of a character to indicate either fraud in management, or bad faith, justifying equitable interference. Likewise, a court of equity will not interfere with the management of a benevolent or protective society, unless the managing officers are acting in excess of their corporate power, or that collusion or fraud is alleged." *Ingram vs. National Union et al.* (1906), 2 Am. L. Rec. 589; 80 O. S. 735; 89 N. E. 1121.

"Where a society, in the exercise of its power, has expelled or is about to expel a member for misconduct, the civil courts will not entertain jurisdiction to prevent the expulsion, or reinstate the expelled member. The alleged irregularity by the lodge or its proper officers in the exercise of its power of expulsion does not give the court jurisdiction. Yet it does not follow that the courts will not prevent such expulsion by in-

junction where property rights are involved." *Evans vs. Supreme Council* (1918), 1 A. L. R. 169.

"The doctrine that a society whether incorporated or not organized for religious, fraternal or social purposes has the power to expel one or more of its members for conduct detrimental to it is fully sustained by the adjudications and is supported by reason. Indeed the doctrine is essentially necessary for the welfare of the society and that it may accomplish the objects for which it was organized." *Hershiser vs. Williams* (1892), 60 O. C. C. 147; 53 O. S. 663; 44 N. E. 1138.

"Supreme lodge has power to alter, amend, or abrogate the laws and has exclusive jurisdiction as to all matters pertaining to the welfare of the order." *Steuve vs. Grand Lodge* (1891), 5 O. C. C. 471; 3 O. C. D. 231.

"The right of a member of a charitable, benevolent, beneficial and social organization to any aid and assistance furnished by the same is lost by the termination of his membership, which may be forfeited by misconduct, and upon becoming a member of any such organization, one member subjects himself to its powers as for instance the power of expulsion, such power having been voluntarily conferred upon it by its members and such person is presumed to know the nature and character of the disciplinary powers over all its members, and by becoming a member of such organization one does not acquire a severable right to any of its property, but merely the right of a member so long as he remains a member." *Hershiser v. Williams* (1892), 11 O. Dec. Rep. 76; affirmed, 53 O. S. 663.

It is the contention of the Respondents that the Petitioner has not been denied any rights as a member of the Union & League which he himself has not denied himself.

Under the Constitution and By-Laws of the Union & League the laws and constitution of the State of Ohio and of the United States, the petitioner has been denied no rights, excepting those he has denied himself by his own conduct, by arbitrarily resisting the decisions of the executive committees and conventions.

The Court of Appeals sustained the lower court in finding that the petitioner was expelled by reason of his own conduct in committing the various infractions of the constitution and by-laws of the Union & League and that he was justly punished as so provided.

There is no debatable constitutional question involved, in that the petitioner was a member of a private fraternal benefit and insurance association organized under authority of the laws of the State of Ohio governing fraternal benefit associations which empowered it to govern itself and its members. (R. C. Chapter 3921.)

Surely the Union & League had the power through its legislative bodies to enact those laws which will not endanger the very existence of the organization and which authority it has by reason of its constitution, by-laws and regulations to bind its members as to any changes made in conformity therewith and which the member must obey if he desires to remain and enjoy the benefits of membership in the organization.

> "When it is said that a by-law is binding, all that is ordinarily meant is that a member must obey it or submit to the penalties prescribed for its violations culminating in temporary or permanent exclusion from the privilege of membership." 69 Am. Dec. 673, 19 R. C. L. 1199.
>
> "They are obligatory on him only so long as he chooses to recognize their authority." 71 Am. Dec. 625.

"But to escape their control he must withdraw from the association if the latter refused to repeal the obnoxious measure." 69 Am. Dec. 673, 19 R. C. L. 1199.

There has been no claim that the membership or its legally constituted representative body, the Executive Committee or the Convention, did not legally vote and approve the loyalty affidavit.

On page 19 of Petitioner's Writ of Certiorari reference is made to the case of

"*Robert M. Wieman et al. vs. Paul W. Updegraff* (1952), *et al.*, 344 U. S. 183 (1952) on appeal from the Supreme Court of Oklahoma with reference to loyalty oaths which were required of teachers by the State of Oklahoma."

This case has no application to the case at bar, because the decision refers to the right of whether or not the State can make restrictions and requirements as to loyalty oaths which would be contrary to the 14th Amendment of the United States and which restricts the power of the States to make such restrictions and requirements. In the matter before this Court we have the Respondent, the Union & League which is a non-profit corporation, a voluntary fraternal benefit association authorized by specific statute of the State of Ohio to issue insurance policies for the mutual benefit of its members, and by which it contracts with its members to be governed by a constitution, by-laws and regulations and future amendments which may be made for the mutual benefit of all its membership and in carrying out the purpose of its organization. Therefore, individuals and societies, by becoming members of the Union & League contract and agree by and through its legislative bodies, the convention, and when the convention is not in session the Ex-

ecutive Committee which may pass such by-laws and regulations binding upon the members and member societies which are not contrary to the constitution, by-laws and regulations of the organization. All of which rights are guaranteed by Article II, Section 28 of the Ohio Constitution and the 14th Amendment of the United States Constitution, wherein no laws shall be made impairing the obligation of contracts.

CONCLUSION.

In conclusion, it is Respondent's contention that throughout the difficulties with the Carpatina and Canton Lodges and the Petitioner, Novak Marku, and counsel, John R. Vintilla, the national officers, the Executive Committees and the conventions of the Respondent, the Union & League since 1948 to 1952, acted in complete conformity and spirit of and with the Articles of Incorporation, the Constitution, By-Laws and the rules and regulations of the Union & League, the Constitutions of the State of Ohio and of the United States and that the Petitioner, Novak Marku, has not and has, therefore, broken his contract with the Respondent, the Union & League, as a member.

> "It is the policy of the law to sustain benevolent societies, it being considered by the courts that they are promotive of good and for the well being of the citizen. Ordinarily, they have a constitution and by-laws for their government, and the courts have held it to be a contract on the part of the member, when initiated, that he will submit himself to the rules, regulations, and general laws of the order, and where they provide the means whereby a member may seek a redress of his grievances for anything done against him in the order. It has been held by the courts that he assents thereto when he becomes a member, and

> contracts that he will abide by the decision of the order. In reviewing their proceedings, the courts will not judge them nicely where the objection is that there was some irregularity in the mode of procedure, where perhaps the society has not strictly observed the rules of evidence that obtain in civil courts. Nor will the civil courts look into the cause of the complaint on which the member is tried, if it appears that the member was arraigned for a complaint recognized by the constitution and laws, since it deems that it is for the best interests of the society and the party concerned that he should abide by the decision of the order." *Ohio ex rel. Pope vs. Castle Excelsior* (1883), 10 W. L. B. 2, 3.

The petitioner has made some comment in his Application for a Writ of Certiorari as to the dissatisfaction of members and the progress being made by the respondents, the Union & League. We wish to state in reply to this inference that since 1948 to the present time there has been an increase in the membership of over 2,000 members and that for the first quarter of 1955 over a quarter of a million dollars in new insurance policies has been written, which is a great advancement for this small organization now totaling nearly 6,000 members.

On the basis of the record and the law, the decisions of the State Court of Appeals and the Supreme Court of the State of Ohio should be affirmed and this petition for a Writ of Certiorari be denied.

Respectfully submitted,

JOSEPH J. CRACIUN,
S. S. FEKETT,
RICHARD H. WOODS,
Attorneys for Respondents.